IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 1116 OF 2004

Smt. Khatija Usman mankar
(deleted vide Exh.45)
Phattemiya Usman Mankar & ors. ... Appellants

V/s

Abdul ahmed Sutar & ors. ... Respondents

Mr. K.K. Jadhav for the appellants.

Mr. N.N. Gawankar for Arfan Saif for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 14TH OCT., 2004.

P.C.:

1. Heard learned counsel for both parties.

2. This is an appeal preferred against the judgment passed by the Addl. District Judge, Satara on 17.7.2004 dismissing the appeal and confirming the order of the Civil Judge, Jr. Divn., Wai, dated 16.12.1996 decreeing the suit of the plaintiffs for possession of the encroached property.

3. Plaintiffs' suit in short was that, an area of 8.64 sq. mtr. of C.S. No.370 was the subject matter of the

suit and it was the case of the plaintiffs that the property belongs is the ancestral property. Adjacent to it towards West, C.S. No. 369 of defendants, is located. According to the plaintiffs, they applied to Municipal Council in the year 1984 for permission to carry out construction in C.S. No. 370. In 1985, plaintiffs made encroachment over the area of C.S. No. 370 to the extent of 8.64 sq. mtr. and had constructed temporary shed over it for which request was made to remove the same but was denied and hence the suit.

Defendants challenged the suit on various grounds. The learned Trial Judge held that the plaintiffs had proved the title to the suit property as well as the fact that defendants had encroached upon the said property to the extent of 8.64 sq.mtr. and, as such, the suit came to be decreed.

The appeal preferred against the said judgment and order in the District Court also came to be dismissed on merits by order dated 17.7.2004. Hence the present appeal is filed.

4. At the outset, it may be noted that the issues involved in this dispute are purely questions of fact

and there is no substantial question of law involved as such. The learned counsel for the appellant sought to raise question relating to the documents purported to be the deposition of plaintiffs in some earlier criminal case said to be admitting the existence of the suit shed over the suit property. However, apparently what judgment of the lower Appellate Court shows that the learned Appellate Court Judge has rightly discarded that document from consideration. The learned counsel for the appellant submitted that since the document was accepted, it should be read in evidence. I prefer to disagree with this proposition and I am satisfied that the learned Appellate Court has rightly discarded it from consideration. In the result, the encroachment stands proved on facts.

5. It must be noted that the Supreme Court time and again has held that the conditions mentioned in Sec.100 of C.P.C. must strictly be fulfilled before a second appeal can be maintained and no Court has power to add to or enlarge those grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of powers under this section. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower

Appellate Court is binding on High Court in second appeal. Adopting any other approach is not permissible. If this ratio laid down in the case of **Kondiba Dagadu Kadam v/s Savitribai Sopan Gujar, reported 1999 SCC 2213,** is applied to the present case, it must be held that the appeal deserves to be dismissed.

Hence, the appeal stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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